

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS

ROBERT BETHEL,

Plaintiff,

Case No. 2:15-cv-3016

vs.

WARDEN CHARLOTTE JENKINS, *et. al.*,

District Judge Algenon L. Marbley

Magistrate Judge Michael J. Newman

Defendants.

**REPORT AND RECOMMENDATION¹ THAT PLAINTIFF'S (1) MOTION FOR
RELIEF FROM JUDGMENT (DOC. 86) AND (2) MOTION TO ALTER OR
AMEND JUDGMENT (DOC. 87) BOTH BE DENIED AS MOOT.**

This civil case is before the Court on Plaintiff's motion for relief from judgment and motion to alter or amend a judgment. Docs. 86, 87. On February 25, 2019, this Court issued a Report and Recommendation that Plaintiff's motion for summary judgment be denied Defendants' motion for summary judgment be granted. Doc. 80. On March 7, 2019, Plaintiff's Objection to the Report and Recommendation were deposited to the prison's internal mailing system but were not filed with the Court until March 14, 2019. Doc. 81, Doc. 86 at PageID 1751. On March 15, 2019, Judge Marbley issued an Order adopting this court's Report and Recommendation. Docs. 79, 80. This resulted in judgment being entered in favor of Defendants and against *pro se* Plaintiff. Doc. 85.

Plaintiff subsequently filed the instant motions, arguing for relief from Judge Marbley's March 15, 2019 Order and Judgment. Docs. 86, 87. Plaintiff argued that Rule 59 or Rule 60 relief was warranted because, under the prison mailbox rule, his Objection was timely filed and required

¹ Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

consideration. *Id.*; *U.S. v. Smotherman*, 838 F.3d 736, 737 (6th Cir. 2016). Thereafter, Judge Marbley vacated the Order that was the subject of Plaintiff's motions. Docs. 79, 80. Judge Marbley reviewed Plaintiff's Objection, but ultimately adopted the Report and Recommendation over it. Doc. 84. Because Plaintiff received the relief that he sought -- *i.e.*, a review of his Objection -- his motions for relief from judgment and to alter or amend the judgment are both moot.

Accordingly, it is **RECOMMENDED THAT**: (1) Plaintiff's motion for relief from judgment be **DENIED AS MOOT**; (2) Plaintiff's motion to alter or amend the judgment be **DENIED AS MOOT**; and (3) this case remain **TERMINATED** on the Court's docket.

Date: April 30, 2019

s/ Michael J. Newman
Michael J. Newman
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within **FOURTEEN** days after being served with this Report and Recommendation. This period is not extended by virtue of Fed. R. Civ. P. 6(d) if served on you by electronic means, such as via the Court's CM/ECF filing system. If, however, this Report and Recommendation was served upon you by mail, this deadline is extended to **SEVENTEEN DAYS** by application of Fed. R. Civ. P. 6(d). Parties may seek an extension of the deadline to file objections by filing a motion for extension, which the Court may grant upon a showing of good cause.

Any objections filed shall specify the portions of the Report and Recommendation objected to, and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based, in whole or in part, upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs.

A party may respond to another party's objections within **FOURTEEN** days after being served with a copy thereof. As noted above, this period is not extended by virtue of Fed. R. Civ. P. 6(d) if served on you by electronic means, such as via the Court's CM/ECF filing system. If, however, this Report and Recommendation was served upon you by mail, this deadline is extended to **SEVENTEEN DAYS** by application of Fed. R. Civ. P. 6(d).

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140, 153-55 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).